IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO.530/1998 IN W.P.NO.67/1987 AND MISC. CIVIL APPLICATION NO. 276/1999.

Chowgule and Company Limited,
having its registered office at
Chowgule House, Mormugao
Harbour, Mormugao, Goa. ... Applicants.

1. The Union of India,
through the Secretary,
Ministry of Finance,
Central Secretariat,
New Delhi.

2. K.S. Tipnis, The Assistant
Collector of Customs (Appraising)
having his office at Customs
House, Mormugao Harbour, Goa. ... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Applicants.

Mr. J. Vaz, Addl. Central Government Standing Counsel for the Respondents.

Mr. V.B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni, Advocate for Mormugao Port Trust.

CORAM: A.M. KHANWILKAR &
P.V. HARDAS, JJ.

DATE: 17TH DECEMBER, 2003.

ORAL ORDER: **(PER KHANWILKAR, J.**

The applicants had filed Writ Petition No. 67/1987 in this Court challenging the validity of the directives issued by the second respondent vide letters dated 26th March and 10th April, 1987 as well as Orders dated 26th, 31st March and 9th April, all of 1987. The applicants had also prayed for direction against the second respondent to withdraw the said

directives and orders whereby the respondents had demanded an amount of Rs.3,86,99,926.23 towards provisional customs duty. The Applicants also prayed for directions against the respondents to forbear from levying any customs as well as additional auxiliary duty in respect of the vessel titled "Maratha Transhipper" by giving them the benefit of exemption Notification No.262 of 1958 or of the Notification No.133 of 1987. The abovesaid Writ Petition however came to be dismissed by oral Judgment dated 12/13th October, 1987. Against the said decision, the Applicants carried the matter before the Apex Court by way of Special Leave Petition which was admitted and registered as Civil Appeal No.3409/1987. It is relevant to note that during the pendency of the above numbered Writ Petition in this Court pursuant to interim order passed by this Court, the Applicants had deposited total amount of Rs.40,00,000.00 in this Court in addition to an amount of Rs.50,00,000.00 which was paid by the Applicants pursuant to the Order of the Apex Court in Civil Misc. Petition No.20129 & 346/86 (In C.A. No.179/85) dated August 20, 1986. In terms of the said order of the Apex Court dated 20th August, 1986 the Applicants in all deposited Rs.1,17,10,522.19 as was demanded by way of provisional customs duty by the respondents. The appeal filed by the Applicants against the decision in

Writ Petition referred to above was finally disposed of by a common judgment and Order passed by the Apex Court dated March 18, 1998 along with Civil Appeals No.1502-1504/1984 which appeals were filed by the Union of India and Another. The principal question examined in the said appeals was whether the vessel in question can also be treated as "Ocean-going vessel". That question has been answered in favour of the Applicants in the said decision.. The Apex Court has held that taking any view of the matter, the plea taken on behalf of the Applicants/owners of the Transhipper that such vessels are entitled to the benefit of the Notification dated 11.10.1958 deserved to be accepted. In the light of the said decision the demand made by the respondents towards customs duty in respect of the said vessel became unavailable. Ordinarily the Applicants would have become entitled to refund of the entire amount deposited by them during the pendency of the Writ Petition pursuant to the interim order passed by this Court or for that matter passed by the Apex Court in respect of the subject matter. However, it is not in dispute that the vessel in question " M.V. Maratha Transhipper " sank in the Arabian Sea at Amee Shoal on 28th May 1985 which is outside the navigational channel of the Mormugao Port. In view of this development, according to the respondents, the Applicants would be liable to

pay customs duty because the proviso in the said Notification postulates that if the vessel is subsequently broken up, it shall be chargeable with the duty which would be payable on her if she were imported to be broken up. It is in this context that the respondents did not refund the amount of Rs.1,17,10,522.19 which was withdrawn in terms of the liberty granted to the respondents by the Court during the pendency of the proceedings. As the respondents did not refund the said amount to the Applicants inspite of having succeeded before the Apex Court on the main question, the Applicants have preferred the present application praying for the following relief:-

> " The petitioners, therefore, pray that the Respondents be directed to refund/repay to the Petitioners, the amount of Rs.1,17,10,522.19, deposited/paid by the Petitioners, with interest, at the rate of 18 per cent per annum thereon, from the date of payment/deposit, till the date of repayment/refund. "

This application is resisted by the respondents because, according to them, the applicants are liable to pay customs duty on the subject vessel notwithstanding the decision of the Apex Court in their favour; in view of the fact that the vessel is broken up for which it will be chargeable with the

duty which would be payable on her if she were imported to be broken up. According to the respondents the total value of the wrecked vessel would be Rs.3,13,04,000.00 and the total duty on the wreck vessel would be around Rs.98,79,542.00. This Court by way of interim order dated 30.3.1999 in the present application, recorded the assurance made by the respondents to deposit the abovesaid amount of Rs.1,17,10,522.00 which was withdrawn pursuant to liberty granted by the Court. Accordingly, the respondents have deposited that amount in this Court. The amount was then directed to be invested. In view of the objection taken on behalf of the respondents by Order dated 7th September, 1999, this Court directed refund of Rs.18,30,980.00 only to the Applicants and the remaining amount was directed to be invested in fixed deposit. Indeed in this Order the Court has observed that the question whether the petitioners are entitled to any interest during the period the amount remained with the Customs Authorities would be decided while finally deciding the application, so also the question of liability of the petitioners/applicants for payment of customs duty on the wreckage. There is one more Order passed in this Application which needs to be adverted to at this stage, i.e. November 13, 2000 relevant extract whereof reads thus:-

> "The Applicants are directed to carry on their salvage work to bring out the wreckage of the vessel "S.S.Maratha Transhipper" belonging to the Applicants which has been stopped because of the monsoon and which the Applicants were supposed to resume from September, 2000.
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> Mr. Lotlikar makes a statement that the salvage work has not yet started and that he was to resume the salvage activities.
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> After the salvage work is completed the Port Trust to inspect the same and certify with respect to the quantum that has been salvaged. They also have to certify in case it is not possible to assess any wreckage since, as per the contention of the Applicants, the vessel is embedded in the bed of the sea and the Port Trust authority to certify accordingly.
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> This is also an interim Order in the Miscellaneous Application. Further Orders will be passed after the certificate of the Port Trust Authorities, this way or that way, as per the abovestated directions is produced by the Applicants."

3. Even after this order was passed, no further progress has been made with regard to salvage work which ought to have been completed in some reasonable time. As mentioned earlier, the vessel in question had sank in the Arabian Sea on 28th May, 1985 and the question regarding the liability to pay customs duty on the said vessel has still remained undecided due to non-completion of salvage work. It is also

appropriate to note that even the apex Court as back as on 20th August, 1986 had allowed the applicants to remove the wreckage under the supervision of the customs authority who were entitled to determine the customs and excise duty on the wreckage. No doubt the issue as to whether the ocean going vessel was entitled for exemption from payment of customs duty in terms of the Notification dated 11th October, 1958 has been answered by the Apex Court. But in view of the development of wreckage of the vessel, the efficacy of the proviso of the Notification thereby making the applicants liable to pay customs duty has remained to be answered since 1985. Inspite of several attempts made in the past, no serious progress has been made to salvage the wreck of the vessel and as a consequence of which the liability to pay customs duty has remained undecided since 1985, which is loss to the Revenue.

4. It is in this backdrop the Applicants were called upon to make positive commitment before the Court about the required time for removal of the wreckage. In response thereto, the Applicants have filed affidavit of the Company Secretary and General Manager and Constituted Attorney of the Applicants Shri R.B. Bilguche dated 17th December, 2003. The Applicants by this Affidavit which is in the nature of

an Undertaking given to this Court, have given a firm commitment of completing the work of wreckage removal latest by mid March, 2005. Besides filing affidavit, the applicants through their counsel have given Undertaking that they would take all necessary steps and ensure that the work of wreck removal is completed in the time bound frame mentioned in the affidavit. Although the time prayed for is too long, we accept the Undertaking so given before us by the Applicants through their counsel. We record that each of the present members of the Board of Directors (as on today) as well as the Directors as on the date of breach as the case may be, as well as the Company Secretary who has filed the affidavit before this Court, would be personally responsible for compliance of the Undertaking so given to the Court. As the Applicants have already indicated the outer limit for completing the work of wreck removal by mid March, 2005, we accept that assurance and grant that time to the Applicants to complete the work of wreckage removal of the subject vessel and in any case not beyond the 30th June, 2005. The removal of the wreckage shall be done under the supervision of the Customs authorities who will be entitled to determine the customs and excise duty on the wreckage. Besides the customs authority, Mormugao Port Trust shall inspect the work of removal of wreck undertaken by the

Applicants and issue necessary certificate in that behalf with regard to the quantum that has been salvaged. The Port Trust may also certify, if it is not possible to salvage any wreck. In the event the customs authorities or for that matter the Port Trust is of the opinion that there is no satisfactory progress of the work of wreck removal so as to be completed as per the assurance given before the Court, it will be open to them to approach this Court for appropriate directions and if such application is filed, the Court may proceed to pass necessary directions including initiating action against the concerned officials of the applicants as may be permissible by law. Besides initiating appropriate action against the concerned persons, it will be open to the Port Trust to undertake the work of removal of remaining wreckage and the estimated cost to be incurred therefor shall be notified to the applicants who, in turn, shall be bound to deposit the said amount with the Port Trust within two weeks from the date of such intimation. On such deposit being made, the Port Trust will proceed with the work of wreck removal under the supervision of the Customs authorities who will be entitled to determine the Customs and Excise duty of the wreckage.

5. In view of the assurance given to us on behalf

of the Applicants as referred to above and which assurance is accepted by us as Undertaking given before this Court, we would allow the application by directing refund of the balance amount lying with this court along with interest accrued thereon to the Applicants on condition that the Applicants to furnish commensurate bank guarantee to be kept alive till December, 2005. It will be open to the Customs authority to invoke the said Bank Guarantee on failure of the applicants to pay the amount within two weeks from the determination made by the Customs authorities regarding the liability of the applicants to pay customs and excise duty. Besides it will be open to the Customs Authorities to invoke the said Bank Guarantee if this Court directs pursuant to an application made in that behalf on the ground that there is no satisfactory progress of work of removal of wreck. In our view the above Order would secure the interest of the Revenue.

6. Insofar as the issue regarding payment of interest at the rate of 18% per annum from the date of payment/deposit made by the applicants in Court till the date of repayment/refund by the respondents, in our opinion, that issue cannot be examined by this Court. We say so because it is not in dispute that amount of Rs.1,17,10,522.19 was combination of

deposits made pursuant to the interim order passed by this Court and also interim order passed by the Apex Court. Moreover, after the dismissal of the Writ Petition the applicants carried the matter in appeal and have succeeded in appeal before the Apex Court. In that sense, the issue relating to liability of the respondents to pay interest for the relevant period can be raised and dealt with only before the Apex Court. In the circumstances, counsel for the applicants, fairly submits that the applicants will not press relief with regard to payment of interest as prayed in this application, if the applicants were to be granted liberty to take appropriate proceedings for that relief before the Apex Court. In our view, this submission seems to be reasonable. Accordingly insofar as the relief of interest as prayed by the applicants, the application would stand dismissed as not pressed to that extent with liberty as prayed for.

7. Accordingly, we proceed to pass the following Order :-

(i) The assurance/undertaking given by the applicants that they shall complete the work of wreck removal within the specified time bound frame as stated in the affidavit as well as oral submission made by the counsel, on instructions, is accepted.

The Aplicants shall complete the work of wreck removal in any case not beyond 30th of June, 2005.

(ii) The work of removal of wreck shall be undertaken under the supervision of customs authorities who will be able to determine the customs and excise duty. will be open to the customs authority/Mormugao Port Trust to apply to this Court in the event they are not satisfied with the nature of work in progress at the instance of the Applicants or for any other appropriate relief, if so advised.

(iii) In the event the applicants fail to complete the work of wreck removal by end of June, 2005 the Mormugao Port Trust shall by 15th July, 2005 call upon the applicants to deposit estimated cost for the remaining work of wreck removal and on such demand being made by the Mormugao Port Trust, the applicants shall forthwith deposit the prescribed amount with the Port Trust not later than two weeks from the date of receipt of the communication in that behalf. The Mormugao Port Trust shall thereafter proceed with the remaining work of removal of wreck under the supervision of the Customs authorities and complete the same as expeditiously as possible.

(iv) The Applicants would be entitled to refund/repay the balance amount lying in this Court which has been invested in fixed deposit along with interest accrued thereon on condition that the applicants to furnish Bank Guarantee for the commensurate amount which shall be kept alive till end of December, 2005 or such other period as the Court may direct from time to time.

(v) The Customs Authority shall determine the liability of the applicants relating to Customs and Excise duty in respect of the subject vessel and/or on the wreck vessel. The applicants shall be liable to pay the amount so determined and demanded by the Customs Authority within four weeks from the date of receipt of communication from the Customs authority in that behalf, failing which it will be open to the Customs authorities to invoke the Bank Guarantee given by the Applicants enabling them to withdraw the amount referred to above and take such other remedial steps as may be permissible by law.

(vi) Liberty to the Customs Authority and/or Mormugao Port Trust to apply for appropriate relief as and when necessary, if so advised.

8. The Application is disposed of on the above terms with no order as to costs.

A.M. KHANWILKAR, J.

P.V. HARDAS, J.

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